

Large On-Site Sewage System Management Agreement (Municipal Management/Oversight)

THIS AGREEMENT is made this _____ day of _____, _____, between the Town of _____, Washington, a Washington municipal corporation, hereinafter referred to as the "Authority", and _____, a Washington corporation, _____, hereinafter referred to as "Developers".

THE PURPOSE OF THIS AGREEMENT IS TO provide for a standby authority for the continuity and permanency of the management entity to be established for the on-site sewage disposal system which is to serve the _____ lots of the development at _____, in _____ County more particularly described in Exhibit "A" attached hereto.

As standby authority, the town is a management entity, which has sufficient knowledge to direct the _____ Association operating and maintaining the system as to proper action, or to hire an appropriate entity to operate the system where necessary.

IT IS UNDERSTOOD THAT it is the prerogative of the state of Washington, its subdivisions and officers, to declare the system unsatisfactory for whatever reason, and that the Secretary of Health is the enforcer of the terms and conditions under which the system is allowed. As standby authority the town is thus under no duty to pass on, inspect, or directly operate or maintain the system.

As used in the context of this agreement, "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties subject to this agreement, including contract sellers, but excluding those having such an interest merely as security for the performance of an obligation, in which case it shall mean the equitable owner.

The term "Lots" shall refer to the above described lots.

THE PARTIES HERETO MUTUALLY AGREE AND COVENANT AS FOLLOWS:

- (a) Developers in the sale of the Lots, shall cause to be recorded, and shall sell each Lot subject to, covenants running with the land which shall carry the burden of this agreement, and in accordance with the covenants attached hereto as Exhibit "B".
- (b) Developers shall cause to be installed on the property described in Exhibit "A" a large on-site sewage system (LOSS) approved by the Washington State Department of Health, and shall supervise the formation of a not for profit corporation to be known as the _____ Association, hereinafter referred to as the "Association", to operate, maintain, repair and otherwise manage the LOSS to the satisfaction of the state Department of Health.

- (c) The Association shall be required to levy on the Lots, and to require Owners to pay assessments sufficient to pay for the cost of maintenance, repair, replacement and management of the LOSS, and to pay Authority for its services and maintain a reserve fund.
- (d) Authority shall hold, for the benefit of Owners and Lots, a Reserve Fund, which shall be for the purpose of meeting emergencies and providing for major repairs, replacement or extension of the LOSS. The initial reserve, to be paid in by Developers, shall be in the amount of \$_____.
- (e) The Association shall set the assessments so as to pay all current expenses and to retain an adequate reserve in the Reserve Fund. The adequate reserve shall be in the amount of \$_____ unless a greater amount is required by an appropriate government agency or the Authority and the state Department of Health approve a lesser amount. When disbursements are made from the Reserve Fund, the Reserve shall be brought back to its proper amount by assessment upon the Lots in accordance with Paragraphs 3.2 and 3.3 of Exhibit B, Declaration of Protective Covenants, Conditions and Restrictions.
- (f) Authority, its successors, or, if approved by the state Department of Health, its assigns, shall hold itself ready at all times to assure that there is a management entity competent to operate, maintain and repair the LOSS. Authority agrees only that, upon receiving information that the LOSS or the management thereof is not functioning properly, it will exercise the powers enumerated below to restore effective management. Authority assumes no responsibility to inspect or pass on the condition of the LOSS. Irrespective of any language to the contrary herein, Authority shall have no obligation to expend its funds for any reason, express or implied, by this agreement, either in the operation or management of the LOSS.
- (g) To carry out its role hereunder, Authority, upon notification by the state Department of Health, or its designated officers or agents, or upon notification by the Association or by Owners, that the system is not operating satisfactorily, or that the Association can not or will not perform its duties, shall have the power and authority:
- (i) To direct the Association to take such action as Authority deems appropriate.
 - (ii) To expend the funds of the Reserve Fund and the Association to hire such personnel or contract for such repairs, replacements or extensions of the LOSS as are required to restore proper operation, and to pay all expenses, costs, damages or obligations arising from the LOSS and its operation, and the carrying out the powers set forth in this Paragraph (g).
 - (iii) To assess and levy upon the Lots, and require Owners to pay, such amounts as are necessary for the continued operation of the system, and to

borrow, as an obligation of Owners, amounts equal to the unpaid assessments and file and foreclose liens therefore against the respective Lots.

- (iv) To suspend the authority of the Association and retain, on behalf of Owners and Lots, such professional management as is required, under the circumstances, for the continued operation of the LOSS, for so long as is required.
- (v) To retain legal counsel and bring any and all legal actions necessary to implement its powers hereunder, in its own name or in the name of the Association, and wherever necessary, all at the expense of the Association and/or the Owners.
- (vi) To restore management of the LOSS to the Association, or its successor, when it appears, to the Authority's satisfaction, that the Association or its successor is able to resume or undertake the duties of management.
- (h) Should Authority find it expedient to effect any repairs, replacement or extensions to the LOSS with its own resources, it shall be entitled to reimbursement therefore in accordance with its then schedule of charges for such services. Nothing contained herein, nor elsewhere in this agreement, shall be construed so as to establish any duty of, or liability for, operation or maintenance of the LOSS by Authority's own personnel or from Authority's own funds.
- (i) It is agreed between the parties that Authority shall receive the sum of \$_____ per annum for acting as Standby Management Authority, which sum is exclusive of the reimbursement set forth in Paragraphs (g) and (h), herein. The sum of \$_____ to be paid on or before the _____ day of _____, _____, and thereafter in quarterly increments payable on or before the 5th day of the first month of each quarter.

Commencing _____, _____, _____, the annual fee shall be increased or decreased according to the latest annual percentage change for All Urban Consumers, U.S. Department of Labor Consumer Price Index: _____, and annually thereafter according to said index.

- (j) Developers shall deposit with Authority the sum of \$_____ to be held as a legal fund to ensure that funds will be immediately available in the event that Authority determines it appropriate to retain legal assistance for any matter arising out of this agreement. If expenditures are made therefrom, the fund shall be brought back to the said amount by assessment in the manner set forth for the Reserve Fund in Paragraph (e), above. Such fund shall be held by Authority or its successor until such time as the use of the LOSS is terminated by connection of the Lots into a municipal sewer, and then the principal and interest shall become the property of Authority to be used for parks and/or recreation purposes.

- (k) After the _____ day of _____, _____, the Association may seek to enter into contract with another municipality to act as Authority. However, Authority hereunder shall continue as such until any successor municipality is obligated under a valid contract approved by the state Department of Health.
- (l) At the end of fifteen years (15) from the date of this agreement the terms hereof, including the fee paid to Authority, shall be renegotiated. If the parties cannot come to mutually agreeable terms, Authority shall have the absolute right to declare this agreement ended and of no further force and effect, subject only to Authority's obligation to give eighteen (18) months written notice to the _____ Association (or Owners) and the state Department of Health (Wastewater Management) of its intent to do so. During this eighteen month notice period the _____ Association and Owners shall enter into an agreement with a successor municipal entity satisfactory to the state Department of Health. Nothing herein shall be construed to prevent the Authority, the Association, and the state Department of Health from entering into a superseding agreement.

IN WITNESS WHEREOF the Parties hereto have set their hands this _____ day of _____, _____.

TOWN OF _____

BY: _____
(TITLE)

ATTEST: _____
(TITLE)

DEVELOPERS:

BY: _____
(TITLE)

BY: _____
(TITLE)

BY: _____
(TITLE)

EXHIBIT C

ON-SITE SEPTIC SYSTEM OPERATING AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the _____ Association, a Washington non-profit corporation, hereinafter referred to as the "Association", and the Washington State Department of Health, hereinafter referred to as the "Department".

IT IS THE PURPOSE OF THIS AGREEMENT to provide for the operation of a large on-site sewage system (LOSS) as required under the provisions of Chapter 246-272-08001 WAC, Rules and Regulations of the Washington State Board of Health.

IT IS MUTUALLY AGREED that the Association will:

- (a) Maintain and operate the LOSS located in the vicinity of the _____, _____ County, Washington, in concurrence with the requirements of the Department and any other regulatory agencies as set forth herein.
- (b) Provide surveillance of the condition and proper and efficient functioning of the LOSS.
- (c) Employ competent personnel, as determined by the Department, familiar with the operation and maintenance of the type of LOSS under its management.
- (d) Provide adequate management, staff, and facilities as necessary to carry out its managerial and record keeping duties.
- (e) ☒ Operate from a fixed location and provide a listed telephone under its business title and street address. Current address and phone is as follows:

() _____
- (f) Keep records of inspections, work done, and other details relating to operation and maintenance of the LOSS.
- (g) Set up and maintain an accounting and audit system, conforming to any applicable statutes.

- (h) Have available at the site of the LOSS a Department-approved operation and maintenance manual specifically prepared for the specifications and condition of the LOSS. Association agrees to provide surveillance and maintenance in accordance with the procedures set forth in the manual.
- (i) Association agrees to:
 - (i) Keep records of inspections, monitoring, work done, conditions found, etc. Records shall be available for inspection by the Department
 - (ii) Provide for pumping of septic tanks or other storage tanks by licensed septic tank pumpers or installers in accordance with the frequency set forth in the operation and maintenance manual.
 - (iii) Submit reports of system maintenance and operation to the Department on forms as set out in the operation and maintenance manual.

The Association reserves the right to contract with public or private agencies or persons for labor or other services.

This agreement shall remain in full force and effect until all units served by the LOSS have been connected into an approved public sewage system, or one year after such an approved sewage system is made available to the Lots serviced by the subject system, whichever event occurs first. There is a standby management agreement with the Town of _____, Washington, a copy that is recorded with the declaration of covenants covering the properties served by the LOSS, and Association agrees to comply with the provisions of that agreement.

IN WITNESS WHEREOF the parties subscribe their signatures hereto this _____ day of _____,

ASSOCIATION

**WASHINGTON STATE
DEPARTMENT OF HEALTH**

BY: _____

BY: _____

TITLE: _____

TITLE: _____